

## **REMARKS**

### **Overview**

Claims 25-47 are pending in the present application. Claims 29, 40, 45 and 46 have been amended. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

### **Specification**

The Specification has been amended to remove the improper language from the Abstract, as suggested by the Examiner.

### **Claim Rejections Under 35 U.S.C. § 112**

Claims 40, 45 and 46 have been amended to obviate the Examiner's 35 U.S.C. § 112 formal objections.

Claims 25-36, 38 and 40-46 were rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 4,274,158 to Pogorski. This rejection is traversed, but before discussing the rejection, Applicant would like to briefly review the invention.

### **The Invention**

In the current invention, the applicant has discovered that in fact it is the retention of the liquid in an inner layer specifically made from wool or a wool blend that can create the best insulating effects. Thus, in the current invention, the applicant specifically requires, as set out in claim 25, that the liquid is retained in the inner layer of wool or wool blend, i.e., it is prevented

from entering any other layer. It is by providing this liquid retention, in conjunction with the specific characteristics of forming the inner layer from the wool or a wool blend, that allow the significant advantages to be achieved, and which distinguish the prior art. These advantages, incidentally, have resulted in significant commercial success in the wetsuit and drysuit marketplace.

### **The Anticipation Rejection**

Pogorski '158 patent relates to a wetsuit which includes an insulating material formed of a multiplicity of layers of material. The structure of the material is relatively complex and comprises inner and outer layers 24, 26, which are formed of knitted nylon fabric. Thus, the inner layer 26 forms the contact surface with the skin of the wearer of the suit.

Intermediate inner and outer layers is provided a central core 12 comprising a number of lamina of knitted fabric to form a structure having open pockets and cells, which allow a fluid such as air to pass through the core.

On opposite sides of the core 12 are provided layers 18 and 20 which are gas and water impermeable. As the layers are impermeable, water cannot enter the central core and contact the material (such as wool) used to form the same. The patent does disclose the use of a sealable closure 22 which can be used to control the pressure of the air in the core 12. However, there is no disclosure of water being able to access the core 12. Furthermore, there is no ability for water or other fluids to enter the core or contact with any wool which may be used in the core, from the inside of the suit as there is provided the impermeable barrier 20.

Thus, the Pogorski '158 patent discloses a wetsuit which has exactly the opposite aim of the present invention. In this respect, it represents teach away art, which *KSR v. Teleflex*, \_\_\_ US \_\_\_ (2007) indicates is an indicia of non-obviousness. The present invention, in claim 25,

requires that liquid on the interior of the suit contacts with the wool containing layer which forms the inner layer of the suit. This cannot be achieved by, and nor is it discussed in the '158 patent. It therefore contains elements, not shown by the art and achieves a result the art cannot. Thus, as a matter of law, it cannot anticipate under 35 U.S.C. § 102.

### **Claim Rejections Under 35 U.S.C. § 103**

Claims 37, 39 and 47 were rejected as obvious under the '158 patent. The Examiner argues essentially that the specific wool is obvious and that there is not shown to be any criticality for the percentages of synthetic. But the claim limitations cannot be so easily dismissed. The Examiner must cite evidence in support of obviousness rejection, not mere conclusory statements (see *KSR* cited above). Here the Specification teaches the importance of the specific wool, and in this particular context that is not disclosed in the art. With regard to the percentage range of the dependent claim (that is discussed in paragraph 48 of the Specification) and it is there even noted this range is expressed as a typical range. Applicant therefore does not rely on the limits of claim 39 separate and apart from the parent claim which it depends [25] for patentability.

While the Examiner has not made an obviousness rejection of claim 25, it is noted that it would be inappropriate to make one based on this art since the art teaches away from elements of the invention. Teach away art does not support an assertion of obviousness, but rather is factual evidence in support of non-obviousness.

## **Conclusion**

Please consider this a Request for Three Month Extension of Time from March 19, 2008 to June 19, 2008 and charge Deposit Account No. 26-0084 the amount of \$525.00 for this extension. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,



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